

STATE OF MICHIGAN
COURT OF APPEALS

BEAU TRACY SIZEMORE and KATHLEEN
SIZEMORE,

UNPUBLISHED
October 14, 2003

Plaintiffs-Appellants/Cross
Appellees,

v

HARVEY RAIMI, M.D., and PONTIAC
OSTEOPATHIC HOSPITAL,

No. 240620
Oakland Circuit Court
LC No. 00-025322-NH

Defendants-Appellees/Cross
Appellants.

Before: Smolenski, P.J., and Murphy and Wilder, JJ.

PER CURIAM.

Plaintiffs appeal as of right and defendants cross appeal from a circuit court order granting defendants' motion for summary disposition. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Kathleen Sizemore became pregnant with her son, plaintiff Beau Sizemore,¹ in July 1980. The boy was born in May 1981. Plaintiff filed this suit after reaching the age of majority, claiming that defendants were negligent in failing to induce labor two weeks early and in failing to perform an emergency caesarian section in a timely manner on the day of birth, and that his "post-maturity" delivery resulted in his having attention deficit disorder (ADD).

The trial court dismissed the complaint, ruling that it was barred by laches. The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). The trial court's factual findings regarding the doctrine of laches are reviewed for clear error. *Gallagher v Keefe*, 232 Mich App 363, 369; 591 NW2d 297 (1998).

¹ Plaintiffs conceded below that Kathleen Sizemore's claim for damages was barred by the statute of limitations. Because she no longer has a claim against defendants, the term "plaintiff" will refer to Beau Sizemore only.

We agree with plaintiff that the trial court erred. Minors cannot be guilty of laches for the failure to act during their minority. *Taylor v SS Kresge Co*, 326 Mich 580, 590; 40 NW2d 636 (1950); *Angeloff v Smith*, 254 Mich 99, 101; 235 NW 823 (1931). Rather, laches applies to unreasonable delay in asserting one's rights after one attains the age of majority. 30A CJS, Equity, § 142, p 377. It appears that plaintiff sought to pursue his claim upon attaining the age of majority and before the statute of limitations expired, and thus he was not dilatory in bringing his claim. We therefore reverse the order granting defendants' motion for summary disposition.

Defendants contend that the trial court's order should be affirmed on the alternative basis that there was insufficient evidence to make out a prima facie case of negligence. However, the trial court did not address this argument in light of its ruling on the laches issue. Typically, appellate review is limited to issues actually decided by the trial court. *Allen v Keating*, 205 Mich App 560, 564-565; 517 NW2d 830 (1994); *Lowman v Karp*, 190 Mich App 448, 454; 476 NW2d 428 (1991). While we recognize that in certain situations appellate review may still take place, we decline to address the argument presented here as we find it more appropriate for the trial court to first rule on this issue should defendants choose to renew the motion on remand.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael R. Smolenski
/s/ William B. Murphy
/s/ Kurtis T. Wilder